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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Re: Comments of GST Telecom, Inc. in CCB Pol. 96-18 & CC Docket No. 97-134

Dear Mr. Caton:

Please find enclosed for filing an original and eleven copies of the Comments of GST Telecom, Inc. in the above-referenced matter. Please date-stamp the additional enclosed copy and return it to the courier.

Thank you for your attention to this matter.

Sincerely,


Antony R. Petrilla

Counsel for GST Telecom, Inc.

Enclosure

cc: Jeffrey Mayhook
Jane Delahanty

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**Before the
Federal Communications Commission
Washington, D.C. 20544**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matters of)	
)	
Guam Public Utilities Commission)	
)	
Petition for Declaratory Ruling)	CCB Pol. 96-18
concerning Sections 3(37) and 251(h))	
of the Communications Act)	
)	
Treatment of the Guam Telephone)	
Authority and Similarly Situated)	
Carriers as Incumbent Local Exchange)	
Carriers under Section 251(h)(2))	CC Docket No. 97-134
of the Communications Act)	

COMMENTS OF GST TELECOM, INC.

GST Telecom, Inc. ("GST"), through undersigned counsel, hereby submits its comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking (released May 19, 1997) ("NPRM") in the above-captioned proceedings.

INTRODUCTION

GST is a competitive local exchange carrier operating in numerous western states and also may seek to operate in the Territory of Guam. GST supports the Commission's tentative conclusion that Guam Telephone Authority ("GTA") should be classified as an incumbent local exchange carrier ("ILEC"), pursuant to Section 251(h)(2) of the Communications Act of 1934 ("Act"), for all necessary purposes under the Act.

ARGUMENT

I. GTA IS AN ILEC UNDER SECTION 251(H)(2) OF THE ACT

The Commission properly applied Section 251(h)(2)'s three-pronged test to arrive at its

tentative conclusion, in the NPRM, that GTA should be treated as an ILEC, although GTA is not an ILEC under Section 251(h)(1). NPRM, ¶ 25. As demonstrated below: (1) GTA is the uncontested monopolist provider of telephone exchange service in Guam; (2) under the reasonable meaning of Section 251(h)(2)(B), GTA “substantially replaced” an ILEC defined under Section 251(h)(1); and (3) the public interest, convenience and necessity, as well as the purposes of Section 251, require GTA to be treated as an ILEC under the Act.

A. It is Uncontested that GTA Possesses Overwhelming Market Power for the Provision of Telephone Exchange Service in Guam

The first prong of Section 251(h)(2) states that a carrier, such as GTA, may be treated as an ILEC if it “occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by” the typical ILEC, defined under Section 251(h)(1). 47 U.S.C. § 251(h)(2)(A). Obviously, Congress intended this provision to apply to carriers with market power similar to that of a monopolist. It is uncontested that GTA is a monopolist with no competition for telephone exchange service in Guam.¹⁴ Due to its domination of the local exchange network, GTA controls bottleneck facilities that, “absent compliance with the obligations of section 251(c),” would allow it to suppress competition for local telephone services. NPRM, ¶ 27. GTA clearly meets the criteria of Section 251(h)(2)(A).

B. Under the Reasonable Meaning of the Act, GTA “Substantially Replaced” an ILEC under Section 251(h)(1) of the Act

The second prong of Section 251(h)(2) allows the Commission to treat GTA as a statutorily-defined ILEC if it has “substantially replaced” such an ILEC. 47 U.S.C.

¹⁴ It is also worth observing that GTA, like most statutorily-defined ILECs under Section 251(h)(1), is the historic, monopolist provider of telephone exchange service in Guam.

§ 251(h)(2)(B). The Commission correctly notes that to read this statutory language literally would lead to an absurd result. NPRM, ¶ 29. GTA looks like, walks like, talks like and smells like the kind of monopolist ILEC that is bound by the obligations of Section 251(c). NPRM, ¶ 33 (“GTA apparently has substantial financial resources, significant economies of density, connectivity, and scale, and, most importantly, control of the bottleneck local exchange network in Guam.”). A literal reading of Section 251(h)(2)(B) would close the local telecommunications market in Guam to competition, contrary to Congress’s intent to open “*all* telecommunications markets to competition.” NPRM, ¶ 32 (quoting Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., at 1 (1996) (emphasis added)). The Commission must construe Section 251(h)(2)(B) to avoid such a patently absurd result.

Alternatively, reading Section 251(h)(2)(B) in conjunction with Section 251(h)(1)(B)(ii) creates ambiguity such that the Commission “may reasonably exercise [its] discretion to construe the statute to permit treating GTA as an incumbent LEC.” NPRM, ¶ 39. If the Commission reads the words “substantially replaced” in Section 251(h)(2)(B) literally to mean that the carrier in question took over the operations of a statutorily-defined ILEC, that provision would be redundant of Section 251(h)(1)(B)(ii), which extends ILEC status to the “successor or assign” of a statutorily-defined ILEC. The resulting ambiguity calls for a different interpretation of the phrase “substantially replaced.”

To avoid an absurdity or to eliminate ambiguity, the Commission should interpret Section 251(h)(2)(B) to apply to carriers that are *functionally equivalent* to statutorily-defined ILECs. GTA plainly falls within this criteria. It possesses all of the attributes of an ILEC under Section 251(h)(1), except for membership in the National Exchange Carrier Association, Inc. (“NECA”)

on February 8, 1996. However, as the Commission observed, GTA could have petitioned to become a NECA member any time after June 2, 1992 — and, indeed, did so after enactment of the Telecommunications Act of 1996. NPRM, ¶ 36. Today, GTA is not only functionally equivalent to a monopolist ILEC that is a member of NECA, GTA *is* a monopolist ILEC that is a member of NECA.²⁴ The Commission should therefore rule that, under its reasonable interpretation of Section 251(h)(2)(B), GTA “substantially replaced” a statutorily-defined ILEC.

C. The Public Interest, Convenience and Necessity, as Well as the Purposes of Section 251 of the Act, Require GTA to Be Treated as an ILEC under the Act

The final prong of Section 252(h)(2) requires the Commission to find that treating GTA as an ILEC under the Act is “consistent with the public interest, convenience, and necessity and the purposes of this section.” 47 U.S.C. § 251(h)(2)(C). Not only would the public interest be served by treating GTA as a statutorily-defined ILEC, the public interest would be undermined to do otherwise. It cannot be over-emphasized that GTA is a monopolist ILEC in every respect contemplated by Congress, except for the date of its membership in NECA. Moreover, every policy rationale for imposing the requirements of Section 251(c) of the Act against monopolist ILECs applies with equal force to GTA, which controls crucial bottleneck network facilities in Guam. If GTA is not subject to Section 251(c), it would be virtually impossible to negotiate, let alone arbitrate, an agreement concerning: interconnection with GTA’s network, unbundling of GTA’s facilities, resale of GTA’s retail services, and collocation at GTA’s premises. Neither the public interest nor the purpose of Section 251 would be served by such an eventuality.

²⁴ *Guam Telephone Authority Petition for Declaratory Ruling to Participate in the National Exchange Carrier Association, Inc.*, Memorandum Opinion and Order, DA 97-1007, CCB/CPD File No. 96-29 (Com. Car. Bur. rel. May 12, 1997).

CONCLUSION

For the foregoing reasons, GTA meets all of the necessary criteria to be treated as an ILEC defined in Section 251(h)(1) of the Act.

Respectfully submitted,



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Dated: July 7, 1997

CERTIFICATE OF SERVICE

I, Sheila M. Beattie, hereby certify on this 7th day of July, 1997, that a copy of the foregoing Comments of GST Telecom, Inc. in CCB Pol. 96-18 & CC Docket No. 97-134, was served upon the parties on the attached list, via hand-delivery or federal express.*

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